IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8766 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIR & LETAL REPRESENTATIVES OF BHAGA DUDA

Versus

SECRETARY (APPEALS)

Appearance:

1. Special Civil Application No. 8766 of 2003

MR PY DIVYESHVAR for Petitioner No. 1

MR HD DAVE, AGP. for Respondent No. 1-2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 11/07/2003

ORAL JUDGEMENT

1 Rule. Mr.H.D.Dave, learned Assistant Government Pleader appears on behalf of the respondents and waives service of Rule. By consent of the learned Advocates of

the respective parties the matter is taken up for final hearing today.

2 This petition primarily challenges the impugned order (Annexure 'A') dated 6/6/2003. The petitioner moved a revision application and along with the said application the petitioner also moved an application seeking stay of proceedings and orders of the lower authorities. In the impugned order a bare one line statement is made that the stay application stands rejected, without assigning any reasons in support of such rejection.

3 Heard Mr.P.Y.Divyeshwar, learned Advocate for the petitioner as well as Mr.H.D.Dave, learned Assistant Government Pleader.

3 The impugned order is an order which cannot be allowed to stand for the simple reason that if the authority is not inclined to grant interim relief it must indicate the reasons therefor, even though briefly. The authority should appreciate that it is discharging quasi judicial function and is required to assign reasons so as to indicate upon perusal of the order that there has been an application of mind as regards merits of the application for stay. The authority is also required to bear in mind that it is exercising discretionary power which is coupled with a duty to discharge the said power in accordance with settled principles of law.

4 The impugned order dated 6/6/2003 (Annexure 'A') is hereby quashed and set aside and the matter is remanded back to the revisional authority viz. respondent no.1. The said authority shall treat the application for stay as having been revived and after hearing the applicant, if necessary, pass a reasoned order bearing in mind the decision of this Court in the case of Nagji Uka Vs. Administrator of Sakedi Agri.Co-operative Society, 1977 (Vol.14) GLT.Pg.83 within a period of seven days from the receipt of the writ of this Court or certified copy of this order whichever is earlier.

5 In the circumstances, the petition stands allowed. Rule made absolute. There shall be no order as to costs. Direct service permitted.

(D.A.Mehta, J)

m.m.bhatt